

MERCHANT MARINE ACT, 1920¹

SEC. 1. PURPOSE AND POLICY OF UNITED STATES

(46 App. U.S.C. 861 (2001)). It is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine, and, in so far as may not be inconsistent with the express provisions of this Act, the Secretary of Transportation shall, in the disposition of vessels and shipping property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be attained.

PURCHASE ALLOWANCE IN SALE OF VESSELS FOR COST OF PUTTING VESSELS IN CLASS (46 App. U.S.C. 864a (2001)).²

Hereafter the Secretary of Transportation may make allowances to purchasers of vessels for cost of putting such vessels in class, such allowances to be determined on the basis of competitive bids, without regard to the provisions of the last paragraph of section 3(d) of the Merchant Ship Sales Act of 1946.

ELEMENTS CONSIDERED IN SALE OF VESSELS IN DETERMINATION OF SELLING PRICE (46 App. U.S.C. 864b (2001)).³

Hereafter, no sale of a vessel by the Maritime Administration of the Department of Transportation shall be completed until its ballast and equipment shall have been inventoried and their value taken into consideration by the Maritime Administration in determining the selling price.

SEC. 6. SALE TO ALIENS (46 App. U.S.C. 865 (2001)).

The Secretary of Transportation is authorized and empowered to sell to aliens, at such prices and on such terms and conditions as he may determine, not inconsistent with the provisions of section 5 (except that completion of the payment of the purchase price and interest shall not be

¹ The term "citizen of the United States" used throughout the Merchant Marine Act, 1920, is defined in Section 37 to have the meaning assigned to it by Section 2 of the Shipping Act, 1916. Section 2 (followed by provisions that affect Section 2 citizenship requirements), is located at page 182, *supra*.

² Enacted as section 101 of the Act of June 30, 1948 (62 STAT. 1199).

³ Enacted as section 1 of the Act of June 29, 1949 (63 STAT. 349).

deferred more than ten years after the making of the contract of sale), such vessels as he shall, after careful investigation, deem unnecessary to the promotion and maintenance of an efficient American merchant marine; but no such sale shall be made unless the Secretary of Transportation, after diligent effort, has been unable to sell, in accordance with the terms and conditions of section 5, such vessels to persons citizens of the United States, and has determined to make such sale; and he shall make as a part of his records a full statement of its reasons for making such sale. Deferred payments of purchase price of vessels under this section shall bear interest at the rate of not less than 5 per centum per annum, payable semiannually.

SEC. 7. ESTABLISHMENT AND OPERATION OF STEAMSHIP LINES BETWEEN PORTS OF UNITED STATES; INVESTIGATION AND DETERMINATION; SALE OR CHARTER OF VESSELS; PREFERENCE IN SALES OR CHARTERS; CONTINUED OPERATION OF LINES; ADDITIONAL LINES; RATES AND CHARGES (46 App. U.S.C. 866 (2001)). The Secretary of Transportation is authorized and directed to investigate and determine as promptly as possible after the enactment of this Act and from time to time thereafter what steamship lines should be established and put in operation from ports in the United States or any Territory, District, or possession thereof to such world and domestic markets as in his judgment are desirable for the promotion, development, expansion, and maintenance of the foreign and coastwise trade of the United States and an adequate postal service, and to determine the type, size, speed, and other requirements of the vessels to be employed upon such lines and the frequency and regularity of their sailings, with a view to furnishing adequate, regular, certain, and permanent service. The Secretary of Transportation is authorized to sell, and if a satisfactory sale cannot be made, to charter such of the vessels referred to in section 4 of this Act or otherwise acquired by the Secretary of Transportation, as will meet these requirements to responsible persons who are citizens of the United States who agree to establish and maintain such lines upon such terms of payment and other conditions as the Secretary of Transportation may deem just and necessary to secure and maintain the service desired; and if any such steamship line is deemed desirable and necessary, and if no such citizen can be secured to supply such service by the purchase or charter of vessels on terms satisfactory to the Secretary of Transportation, the Secretary of Transportation shall operate vessels on such line until the business is developed so that such vessels may be sold on satisfactory terms and the service maintained, or unless it shall appear within a reasonable time that such line cannot be made self-sustaining: Provided, That preference in the sale or assignment of vessels for operation on such steamship

lines shall be given to persons who are citizens of the United States who have the support, financial and otherwise, of the domestic communities primarily interested in such lines if the Secretary of Transportation is satisfied of the ability of such persons to maintain the service desired and proposed to be maintained, or to persons who are citizens of the United States who may then be maintaining a service from the port of the United States to or in the general direction of the world-market port to which the Secretary of Transportation has determined that such service should be established: Provided further, That where steamship lines and regular service have been established and are being maintained by ships of the board at the time of the enactment of this Act, such lines and service shall be maintained by the board until, in the opinion of the board, the maintenance thereof is unbusinesslike and against the public interests: And provided further, That whenever the Secretary of Transportation shall determine, as provided in this Act, that trade conditions warrant the establishment of a service or additional service under Government administration where a service is already being given by persons, citizens of the United States, the rates and charges for such Government service shall not be less than the cost thereof, including a proper interest and depreciation charge on the value of Government vessels and equipment employed therein.

SEC. 8. INVESTIGATION OF PORT, TERMINAL, AND WAREHOUSE FACILITIES (46 App. U.S.C. 867 (2001)).

It shall be the duty of the Secretary of Transportation, in cooperation with the Secretary of War, with the object of promoting, encouraging, and developing ports and transportation facilities in connection with water commerce over which he has jurisdiction, to investigate territorial regions and zones tributary to such ports, taking into consideration the economies of transportation by rail, water, and highway and the natural direction of the flow of commerce; to investigate the causes of the congestion of commerce at ports and the remedies applicable thereto; to investigate the subject of water terminals, including the necessary docks, warehouses, apparatus, equipment, and appliances in connection therewith, with a view to devising and suggesting the types most appropriate for different locations and for the most expeditious and economical transfer or interchange of passengers or property between carriers by water and carriers by rail; to advise with communities regarding the appropriate location and plan of construction of wharves, piers, and water terminals; to investigate the practicability and advantages of harbor, river, and port improvements in connection with foreign and coast-wise trade; and to investigate any other matter that may tend to promote and encourage the use by vessels of ports adequate to care for the freight which would naturally pass through such ports: Provided, That if after such investigation the Secretary of Transportation shall be of the

opinion that rates, charges, rules, or regulations of common carriers by rail subject to the jurisdiction of the Surface Transportation Board are detrimental to the declared object of this section, or that new rates, charges, rules, or regulations, new or additional port terminal facilities, or affirmative action on the part of such common carriers by rail is necessary to promote the objects of this section, the Secretary of Transportation may submit his findings to the Surface Transportation Board for such action as such Board may consider proper under existing law.

SEC. 9. VESSELS SOLD UNDER DEFERRED PAYMENT PLAN; INSURANCE (46 App. U.S.C. 868 (2001)).

If the terms and conditions of any sale of a vessel made under the provisions of this Act include deferred payments of the purchase price, the Secretary of Transportation shall require, as part of such terms and conditions, that the purchaser of the vessel shall keep the same insured (a) against loss or damage by fire, and against marine risks and disasters, and war and other risks if the Secretary of Transportation so specifies, with such insurance companies, associations or underwriters, and under such forms of policies, and to such an amount, as the Secretary of Transportation may prescribe or approve; and (b) by protection and indemnity insurance with such insurance companies, associations, or underwriters and under such forms of policies, and to such an amount as the Secretary of Transportation may prescribe or approve. The Insurance required to be carried under this section shall be made payable to the Secretary of Transportation and/or to the parties as interest may appear. The Secretary of Transportation is authorized to enter into any agreement that he deems wise in respect to the payment and/or the guarantee of premiums of insurance.

SEC. 10. CREATION OF FUND FOR INSURANCE OF INTERESTS OF UNITED STATES (46 App. U.S.C. 869 (2001)). The Secretary of Transportation may create out of insurance premiums, and revenue from operations and sales, and maintain and administer separate insurance funds which he may use to insure in whole or in part against all hazards commonly covered by insurance policies in such cases, any legal or equitable interest of the United States (1) in any vessel constructed or in process of construction; and (2) in any plants or property in the possession or under the authority of the Secretary of Transportation. The United States shall be held to have such an interest in any vessel toward the construction, reconditioning, remodeling, improving, or equipping of which a loan has been made under the authority of this Act, in any vessel upon which he holds a mortgage or lien of any character, or in any vessel which is obligated by contract with the owner to perform any service in behalf of the United States, to the extent of the Government's interest therein.

SEC. 12. REPAIR AND OPERATION OF VESSELS UNTIL SALE (46 App. U.S.C. 871 (2001)). All vessels may be reconditioned and kept in suitable repair and until sold shall be managed and operated by the Secretary of Transportation or chartered or leased by him on such terms and conditions as the Secretary of Transportation shall deem wise for the promotion and maintenance of an efficient merchant marine, pursuant to the policy and purposes declared in sections 1 and 5 of this Act. The term "reconditioned" as used in this section includes the substitution of the most modern, most efficient, and most economical types of internal-combustion engines as the main propulsive power of vessels. Should the Secretary of Transportation have any such engines built in the United States and installed, in private shipyards or navy yards of the United States, in one or more merchant vessels owned by the United States, and the cost to the Secretary of Transportation of such installation exceeds the amount of funds otherwise available to him for that use, the Secretary of Transportation may transfer to his funds from which expenditures under this section may be paid, from his construction loan fund authorized by section 11 of the Merchant Marine Act, 1920, so much as in his judgment may be necessary to meet obligations under contracts for such installation; and the Treasurer of the United States shall, at the request of the Secretary of Transportation, make the transfer accordingly: Provided, That the total amount expended by the Secretary of Transportation for this purpose shall not in the aggregate exceed \$ 25,000,000. Any such vessel hereafter so equipped by the Secretary of Transportation under the provisions of this section shall not be sold for a period of five years from the date the installation thereof is completed, unless it is sold for a price not less than the cost of the installation thereof and of any other work of reconditioning done at the same time plus an amount not less than \$ 10 for each dead-weight ton of the vessel as computed before such reconditioning thereof is commenced. The date of the completion of such installation and the amount of the dead-weight tonnage of the vessel shall be fixed by the Secretary of Transportation: Provided further, That in fixing the minimum price at which the vessel may thus be sold the Secretary of Transportation may deduct from the aggregate amount above prescribed 5 per centum thereof per annum from the date of the installation to the date of sale as depreciation: And provided further, That no part of such fund shall be expended upon the re-conditioning of any vessel unless the Secretary of Transportation shall have first made a binding contract for a satisfactory sale of such vessel in accordance with the provisions of this Act, or for the charter or lease of such vessels for a period of not less than five years by a capable, solvent operator; or unless the Secretary of Transportation is prepared and intends to directly put such vessel in operation immediately upon completion. Such vessel, in any of

the enumerated instances, shall be documented under the laws of the United States and shall remain documented under such laws for a period of not less than five years from the date of the completion of the installation, and during such period it shall be operated only on voyages which are not exclusively coastwise.

SEC. 13. SALE OF PROPERTY OTHER THAN VESSELS (46 App. U.S.C. 872 (2001)). The Secretary of Transportation is further authorized to sell all property other than vessels transferred to him under section 4 upon such terms and conditions as the Secretary of Transportation may determine and prescribe.

SEC. 17. POSSESSION AND CONTROL OF TERMINAL EQUIPMENT AND FACILITIES (46 App. U.S.C. 875 (2001)). The President may at any time he deems it necessary, by order setting out the need therefor and fixing the period of such need, permit or transfer the possession and control of any part of the property taken over by or transferred to the Secretary of Transportation under this section to the War Department or the Navy Department for their needs; and when in the opinion of the President such need therefor ceases the possession and control of such property shall revert to the Secretary of Transportation. None of such property shall be sold except as may be provided by law.

SEC. 19. POWER OF SECRETARY AND COMMISSION TO MAKE RULES AND REGULATIONS (46 App. U.S.C. 876 (2001)).⁴

(a) The Secretary of Transportation is authorized and directed in aid of the accomplishment of the purposes of this Act—

(1) To make all necessary rules and regulations to carry out the provisions of this Act;

And the Federal Maritime Commission is authorized and directed in aid of the accomplishment of the purposes of this Act:

(2) To make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, including intermodal movements, terminal operations, cargo

⁴Title I of Public Law 105-258, approved October 14, 1998 (112 STAT. 1902), the Ocean Shipping Reform Act of 1998, made comprehensive amendments to the Shipping Act of 1984. Section 301 of Title II of that Act (112 STAT. 1915) made conforming amendments to Section 19 of the Merchant Marine Act, 1920. Section 2 of Public Law 105-258, provides: "Except as otherwise expressly provided in this Act, this Act and the amendments made by this Act take effect May 1, 1999."

solicitation, agency services, ocean transportation intermediary services and operations, and other activities and services integral to transportation systems, and which arise out of or result from foreign laws, rules, or regulations or from competitive methods, pricing, practices, or other practices employed by owners, operators, agents, or masters of vessels of a foreign country; and

(3) To request the head of any department, board, bureau, or agency of the Government to suspend, modify, or annul rules or regulations which have been established by such department, board, bureau, or agency, or to make new rules or regulations affecting shipping in the foreign trade other than such rules or regulations relating to the Public Health Service, the Consular Service, and the Steamboat Inspection Service.

(b) No rule or regulation shall be established by any department, board, bureau, or agency of the Government which affects shipping in the foreign trade, except rules or regulations affecting the Public Health Service, the Consular Service, and the Steamboat Inspection Service, until such rule or regulation has been submitted to the board for its approval and final action has been taken thereon by the board or the President.

(c) Whenever the head of any department, board, bureau, or agency of the Government refuses to suspend, modify, or annul any rule or regulation, or make a new rule or regulation upon request of the board, as provided in subsection (a)(3) of this section, or objects to the decision of the board in respect to the approval of any rule or regulation, as provided in subsection (b) of this section, either the board or the head of the department, board, bureau, or agency which has established or is attempting to establish the rule or regulation in question may submit the facts to the President, who is hereby authorized to establish or suspend, modify, or annul such rule or regulation.

(d) No rule or regulation shall be established which in any manner gives vessels owned by the United States any preference or favor over those vessels documented under the laws of the United States and owned by persons who are citizens of the United States.

(e) The Commission may initiate a rule or regulation under paragraph (1)(b) of this section either on its own motion or pursuant to a petition. Any person, including a common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean transportation intermediary, marine terminal operator, or any component of the Government of the United States, may file a petition for relief under subsection (a)(2) of this section.

(f) In furtherance of the purposes of subsection (a)(2) of this section—

(1) the Commission may, by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or an officer, receiver, trustee, lessee, agent, or employee thereof) to file

with the Commission a report, answers to questions, documentary material, or other information which the Commission considers necessary or appropriate;

(2) the Commission may require a report or answers to questions to be made under oath;

(3) the Commission may prescribe the form and the time for response to a report and answers to questions; and

(4) a person who fails to file a report, answer, documentary material, or other information required under this paragraph shall be liable to the United States Government for a civil penalty of not more than \$5,000 for each day that the information is not provided.

(g) In proceedings under subsection (a)(2) of this section—

(1) the Commission may authorize a party to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, are in conformity with the rules applicable in civil proceedings in the district courts of the United States;

(2) the Commission may by subpoena compel the attendance of witnesses and production of books, papers, documents, and other evidence;

(3) subject to funds being provided by appropriations Acts, witnesses are, unless otherwise prohibited by law, entitled to the same fees and mileage as in the courts of the United States;

(4) for failure to supply information ordered to be produced or compelled by subpoena under paragraph (2), the Commission may— (A) after notice and an opportunity for hearing, suspend tariffs and service contracts of a common carrier or that common carrier's right to use tariffs of conferences and service contracts of agreements of which it is a member, or (B) assess a civil penalty of not more than \$5,000 for each day that the information is not provided; and

(5) when a person violates an order of the Commission or fails to comply with a subpoena, the Commission may seek enforcement by a United States district court having jurisdiction over the parties, and if, after hearing, the court determines that the order was regularly made and duly issued, it shall enforce the order by an appropriate injunction or other process, mandatory or otherwise.

(h) Notwithstanding any other law, the Commission may refuse to disclose to the public a response or other information provided under the terms of this section.

(i) If the Commission finds that conditions that are unfavorable to shipping under subsection (a)(2) of this section exist, the Commission may—

(1) limit sailings to and from United States ports or the amount or type of cargo carried;

(2) suspend, in whole or in part, tariffs and service contracts for carriage to or from United States ports, including a common carrier's right to use tariffs and service contracts in United States trades of which it is a member for any period the Commission specifies;

(3) suspend, in whole or in part, an ocean common carrier's right to operate under an agreement filed with the Commission, including any agreement authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargoes or revenue with other ocean common carriers;

(4) impose a fee, not to exceed \$1,000,000 per voyage; or

(5) take any other action the Commission finds necessary and appropriate to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

(j) Upon request by the Commission—

(1) the collector of customs at the port or place of destination in the United States shall refuse the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 91) to a vessel of a country that is named in a rule or regulation issued by the Commission under subsection (a)(2) of this section, and shall collect any fees imposed by the Commission under subsection (i)(4) of this section; and

(2) the Secretary of the department in which the Coast Guard is operating shall deny entry for purpose of oceanborne trade, of a vessel of a country that is named in a rule or regulation issued by the Commission under subsection (a)(2) of this section, to any port or place in the United States or the navigable waters of the United States, or shall detain that vessel at the port or place in the United States from which it is about to depart for another port or place in the United States.

(k) A common carrier that accepts or handles cargo for carriage under a tariff or service contract that has been suspended under subsection (g)(4) or (i)(2) of this section, or after its right to use another tariff or service contract has been suspended under those paragraphs, is subject to a civil penalty of not more than \$50,000 for each day that it is found to be operating under a suspended tariff or service contract.

(l) The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate Government agencies prior to taking any action under this section.

SEC. 21. COASTWISE LAWS EXTENDED TO ISLAND TERRITORIES AND POSSESSIONS (46 App. U.S.C. 877 (2001)).⁵ From and after February 1, 1922, the coastwise laws of the United States shall extend to the island Territories and possessions of

⁵ Note that American Samoa is excluded from the coastwise laws by the provision of law set forth in 48 U.S.C. 1664.

the United States not now covered thereby, and the Secretary of Transportation is directed prior to the expiration of such year to have established adequate steamship service at reasonable rates to accommodate the commerce and the passenger travel of said islands and to maintain and operate such service until it can be taken over and operated and maintained upon satisfactory terms by private capital and enterprise: Provided, That if adequate shipping service is not established by February 1, 1922, the President shall extend the period herein allowed for the establishment of such service in the case of any island Territory or possession for such time as may be necessary for the establishment of adequate shipping facilities therefor: Provided further, That until Congress shall have authorized the registry as vessels of the United States of vessels owned in the Philippine Islands, the Government of the Philippine Islands is hereby authorized to adopt, from time to time, and enforce regulations governing the transportation of merchandise and passengers between ports or places in the Philippine Archipelago: And provided further, That the foregoing provisions of this section shall not take effect with reference to the Philippine Islands until the President of the United States after a full investigation of the local needs and conditions shall, by proclamation, declare that an adequate shipping service has been established as herein provided and fix a date for the going into effect of the same: And provided further, That the coastwise laws of the United States shall not extend to the Virgin Islands of the United States until the President of the United States shall, by proclamation, declare that such coastwise laws shall extend to the Virgin Islands and fix a date for the going into effect of same.

SEC. 27. JONES ACT - TRANSPORTATION OF MERCHANDISE BETWEEN POINTS IN UNITED STATES IN OTHER THAN DOMESTIC BUILT OR REBUILT AND DOCUMENTED VESSELS; INCINERATION OF HAZARDOUS WASTE AT SEA (46 App. U.S.C. 883 (2001)).⁶

No merchandise, including merchandise owned by the United States Government, a State (as defined in section 2101 of title 46, United States Code), or a subdivision of a State, shall be transported by water, or by land and water, on penalty of forfeiture of the merchandise (or a monetary amount up to the value thereof as determined by the Secretary of the Treasury, or the actual cost of the transportation, whichever is greater, to be recovered from any consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing said merchandise to be transported), between points in the United States, including Districts, Territories, and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for

⁶ The Jones Act is one of the U.S. cabotage laws that are set forth under Cabotage, page 277, *infra*.

any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States,⁷ or vessels to which the privilege of engaging in the coastwise trade is extended by sections 18 or 22 of this Act: Provided, That no vessel of more than 200 gross tons (as measured under chapter 143 of title 46, United States Code) having at any time acquired the lawful right to engage in the coastwise trade, either by virtue of having been built in, or documented under the laws of the United States, and later sold foreign in whole or in part, or placed under foreign registry, shall hereafter acquire the right to engage in the coastwise trade: Provided further, That no vessel which has acquired the

⁷ Note the effect of 46 U.S.C. 12106(a)(2)(B), (d) and (e). 46 U.S.C. 12106(a), provides: "(a) A certificate of documentation may be endorsed with a coastwise endorsement for a vessel that--(1) is eligible for documentation; (2)(A) was built in the United States; or (B) if not built in the United States, was captured in war by citizens of the United States and lawfully condemned as prize, was adjudged to be forfeited for a breach of the laws of the United States, or qualified for documentation under section 4136 of the Revised Statutes (46 App. U.S.C. 14); and (3) otherwise qualifies under laws of the United States to be employed in the coastwise trade."

46 U.S.C. 12106(d) provides: "(d)(1) A vessel may be issued a certificate of documentation with a coastwise endorsement if--(A) the vessel is owned by a not-for-profit oil spill response cooperative or by members of such a cooperative who dedicate the vessel to use by the cooperative; (B) the vessel is at least 50 percent owned by persons or entities described in section 12102(a) of this title; (C) the vessel otherwise qualifies under section 12106 to be employed in the coastwise trade; and (D) use of the vessel is restricted to--(i) the deployment of equipment, supplies, and personnel to recover, contain, or transport oil discharged into the navigable waters of the United States, or within the Exclusive Economic Zone, or (ii) for training exercises to prepare to respond to such a discharge. (2) For purposes of the first proviso of section 27 of the Merchant Marine Act, 1920, section 2 of the Shipping Act of 1916, and section 12102(a) of this title, a vessel meeting the criteria of this subsection shall be considered to be owned exclusively by citizens of the United States."

46 U.S.C. 12106(e), provides: "(e) (1) A certificate of documentation for a vessel may be endorsed with a coastwise endorsement if-- (A) the vessel is eligible for documentation; (B) the person that owns the vessel, a parent entity of that person, or a subsidiary of a parent entity of that person, is primarily engaged in leasing or other financing transactions; (C) the vessel is under a demise charter to a person that certifies to the Secretary that the person is a citizen of the United States for engaging in the coastwise trade under section 2 of the Shipping Act, 1916; (D) the demise charter is for a period of at least 3 years or a shorter period as may be prescribed by the Secretary; and (E) the vessel is otherwise eligible for documentation under this section. (2) The demise charter and any amendments to that charter shall be filed with the certificate required by this subsection, or within 10 days following the filing of an amendment to the charter, and such charter and amendments shall be made available to the public. (3) Upon termination by a demise charterer required under paragraph (1)(C), the coastwise endorsement of the vessel may, in the sole discretion of the Secretary, be continued after the termination for default of the demise charter for a period not to exceed 6 months on such terms and conditions as the Secretary may prescribe. (4) For purposes of section 2 of the Shipping Act, 1916, and section 12102(a) of this title, a vessel meeting the criteria of this subsection is deemed to be owned exclusively by citizens of the United States."

lawful right to engage in the coastwise trade, by virtue of having been built in or documented under the laws of the United States, and which has later been rebuilt, shall have the right thereafter to engage in the coastwise trade, unless the entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel, is effected within the United States, its Territories (not including trust territories), or its possessions: Provided further, That this section shall not apply to merchandise transported between points within the continental United States, including Alaska, over through routes heretofore or hereafter recognized by the Surface Transportation Board for which routes rate tariffs have been or shall hereafter be filed with the Board when such routes are in part over Canadian rail lines and their own or other connecting water facilities: Provided further, That this section shall not become effective upon the Yukon River until the Alaska Railroad shall be completed and the Secretary of Transportation shall find that proper facilities will be furnished for transportation by persons citizens of the United States for properly handling the traffic: Provided further, That this section shall not apply to the transportation of merchandise loaded on railroad cars or to motor vehicles with or without trailers, and with their passengers or contents when accompanied by the operator thereof, when such railroad cars or motor vehicles are transported in any railroad car ferry operated between fixed termini on the Great Lakes as part of a rail route, if such car ferry is owned by a common carrier by water and operated as part of a rail route with the approval of the Surface Transportation Board, and if the stock of such common carrier by water, or its predecessor, was owned or controlled by a common carrier by rail prior to June 5, 1920, and if the stock of the common carrier owning such car ferry is with the approval of the Board, now owned or controlled by any common carrier by rail and if such car ferry is built in and documented under the laws of the United States: Provided further, That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States, this section shall not apply to the transportation by vessels of the United States not qualified to engage in the coastwise trade, or by vessels of foreign registry, of (a) empty cargo vans, empty lift vans, and empty shipping tanks, (b) equipment for use with cargo vans, lift vans, or shipping tanks, (c) empty barges specifically designed for carriage aboard a vessel and equipment, excluding propulsion equipment, for use with such barges, and (d) any empty instrument for international traffic exempted from application of the customs laws by the Secretary of the Treasury pursuant to the provisions of section 322(a), Tariff Act of 1930 (19 U.S.C. 1322)(a)), if the articles described in clauses (a) through (d) are owned or leased by the

owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade; and (e) stevedoring equipment and material, if such equipment and material is owned or leased by the owner or operator of the transporting vessel, or is owned or leased by the stevedoring company contracting for the lading or unlading of that vessel, and is transported without charge for use in the handling of cargo in foreign trade; Provided further, That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon his finding, pursuant to information furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States, the Secretary of the Treasury may suspend the application of this section to the transportation of merchandise between points in the United States (excluding transportation between the continental United States and noncontiguous states, districts, territories, and possessions embraced within the coastwise laws) which, while moving in the foreign trade of the United States, is transferred from a non-self-propelled barge certified by the owner or operator to be specifically designed for carriage aboard a vessel and regularly carried aboard a vessel in foreign trade to another such barge owned or leased by the same owner or operator, without regard to whether any such barge is under foreign registry or qualified to engage in the coastwise trade: Provided further, That until April 1, 1984, and notwithstanding any other provisions of this section, any vessel documented under the laws of the United States and owned by persons who are citizens of the United States may, when operated upon a voyage in foreign trade, transport merchandise in cargo vans, lift vans, and shipping-tanks between points embraced within the coastwise laws for transfer to or when transferred from another vessel or vessels, so documented and owned, of the same operator when the merchandise movement has either a foreign origin or a foreign destination; but this proviso (1) shall apply only to vessels which that same operator owned, chartered or contracted for the construction of prior to the date of the enactment of this proviso [enacted Nov. 16, 1979], and (2) shall not apply to movements between points in the contiguous United States and points in Hawaii, Alaska, the Commonwealth of Puerto Rico and United States territories and possessions. For the purposes of this section, after December 31, 1983, or after such time as an appropriate vessel has been constructed and documented as a vessel of the United States, the transportation of hazardous waste, as defined in section 1004(5) of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6903(5)), from a point in the United States for the purpose of the incineration at sea of that waste shall be deemed to be transportation by water of merchandise between points in the United States: Provided, however, That the provisions of this sentence shall not apply to this transportation when performed by a foreign-flag ocean incineration vessel, owned by or under construction on May 1,

1982, for a corporation wholly owned by a citizen of the United States; the term "citizen of the United States", as used in this provision, means a corporation as defined in sections 2(a) and 2(b) of the Shipping Act, 1916 (46 U.S.C. 802(a) and (b)). The incineration equipment on these vessels shall meet all current United States Coast Guard and Environmental Protection Agency standards. These vessels shall, in addition to any other inspections by the flag state, be inspected by the United States Coast Guard, including drydock inspections and internal examinations of tanks and void spaces, as would be required of a vessel of the United States. Satisfactory inspection shall be certified in writing by the Secretary of Transportation. Such inspections may occur concurrently with any inspections required by the flag state or subsequent to but no more than one year after the initial issuance or the next scheduled issuance of the Safety of Life at Sea Safety Construction Certificate. In making such inspections, the Coast Guard shall refer to the conditions established by the initial flag state certification as the basis for evaluating the current condition of the hull and superstructure. The Coast Guard shall allow the substitution of an equivalent fitting, material, appliance, apparatus, or equipment other than that required for vessels of the United States if the Coast Guard has been satisfied that fitting, material, appliance, apparatus, or equipment is at least as effective as that required for vessels of the United States. Provided further, That for the purposes of this section, supplies aboard United States documented fish processing vessels, which are necessary and used for the processing or assembling of fishery products aboard such vessels, shall be considered ship's equipment and not merchandise: Provided further, That for purposes of this section, the term "merchandise" includes valueless material: Provided further, That this section applies to the transportation of valueless material or any dredged material regardless of whether it has commercial value, from a point or place in the United States or a point or place on the high seas within the Exclusive Economic Zone as defined in the Presidential Proclamation of March 10, 1983, to another point or place in the United States or a point or place on the high seas within that Exclusive Economic Zone: Provided further, That the transportation of any platform jacket in or on a launch barge between two points in the United States, at one of which there is an installation or other device within the meaning of section 4(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)), shall not be deemed transportation subject to this section if the launch barge has a launch capacity of 12,000 long tons or more, was built as of the date of enactment of this proviso [enacted June 7, 1988], and is documented under the laws of the United States, and the platform jacket cannot be transported on and launched from a launch barge of lesser launch capacity that is identified by the Secretary of Transportation and is available for such transportation.

**REPORTS REQUIRED OF UNITED STATES VESSELS
REBUILT ABROAD, PENALTY FOR FAILURE TO
REPORT; MITIGATION OF PENALTY (46 App. U.S.C.**

883a (2001))⁸ If any vessel of more than five hundred gross tons as measured under section 14502 of title 46, United States Code, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title documented under the laws of the United States, or last documented under such laws, is rebuilt, and any part of the rebuilding, including the construction of major components of the hull and superstructure of the vessel, is not effected within the United States, its Territories (not including trust territories) or its possessions, a report of the circumstances of such rebuilding shall be made to the Secretary of the Treasury, upon the first arrival of the vessel thereafter at a port within the customs territory of the United States, if rebuilt outside the United States, its Territories (not including trust territories), or its possessions, or, in any other case, upon completion of the rebuilding, in accordance with such regulations as the Secretary may prescribe. If the required report is not made, the vessel, together with its tackle, apparel, equipment, and furniture, shall be forfeited, and the master and owner shall each be liable to a penalty of \$ 200. Any penalty or forfeiture incurred under this Act may be remitted or mitigated by the Secretary under the provisions of section 5294 of the Revised Statutes of the United States, as amended (U. S. C., 1952 edition, title 46, sec. 7)

REGULATIONS (46 App. U.S.C. 883b (2001)).⁹ The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the purposes of this Act.

**SEC. 27A. BOWATERS AMENDMENT - CORPORATION
AS CITIZEN; FISHERIES AND TRANSPORTATION OF
MERCHANDISE OR PASSENGERS BETWEEN POINTS
IN UNITED STATES; PARENT AND SUBSIDIARY COR-
PORATIONS; DOMESTIC BUILT VESSELS; CERTIFI-
CATE; SURRENDER OF DOCUMENTS ON CHANGE IN
STATUS (46 App. U.S.C. 883-1 (2001)).** Notwithstanding any other provision of law, a corporation incorporated under the laws of the United States or any State, Territory, District, or possession thereof, shall be deemed to be a citizen of the United States for the purposes of and within the meaning of that term as used in sections 9 and 37 of the Shipping Act, 1916, as amended (46 U. S. C. 808, 835), section 27 of the Merchant Marine Act of 1920, as amended (46 U. S. C. 883),

⁸ Enacted as section 2 of the Act of July 14, 1956 (70 STAT. 544), as amended.

⁹ Enacted as section 3 of the Act of July 14, 1956 (70 STAT. 544).

Revised Statutes, section 4370 (46 U. S. C. 316), and the laws relating to the documentation of vessels, if it is established by a certificate filed with the Secretary of the Treasury as hereinafter provided, that—

(a) a majority of the officers and directors of such corporation are citizens of the United States;

(b) not less than 90 per centum of the employees of such corporation are residents of the United States;

(c) such corporation is engaged primarily in a manufacturing or mineral industry in the United States or any Territory, District, or possession thereof;

(d) the aggregate book value of the vessels owned by such corporation does not exceed 10 per centum of the aggregate book value of the assets of such corporation; and

(e) such corporation purchases or produces in the United States, its Territories, or possessions not less than 75 per centum of the raw materials used or sold in its operations.

but no vessel owned by any such corporation shall engage in the fisheries or in the transportation of merchandise or passengers for hire between points in the United States, including Territories, Districts, and possessions thereof, embraced within the coastwise laws, except as a service for a parent or subsidiary corporation and except when such vessel is under demise or bareboat charter at prevailing rates for use otherwise than in the domestic non-contiguous trades from any such corporation to a carrier subject to jurisdiction under subchapter II of chapter 135 of title 49, United States Code, which otherwise qualifies as a citizen under section 2 of the Shipping Act, 1916, as amended (46 U. S. C. 802), and which is not connected, directly or indirectly, by way of ownership or control with such corporation.

As used herein (1), the term "parent" means a corporation which controls, directly or indirectly, at least 50 per centum of the voting stock of such corporation, and (2), the term "subsidiary" means a corporation not less than 50 per centum of the voting stock of which is controlled, directly or indirectly, by such corporation or its parent, but no corporation shall be deemed to be a "parent" or "subsidiary" hereunder unless it is incorporated under the laws of the United States, or any State, Territory, District, or possession thereof, and there has been filed with the Secretary of the Treasury a certificate as hereinafter provided.

Vessels built in the United States and owned by a corporation meeting the conditions hereof which are non-self-propelled or which, if self-propelled, are of less than five hundred gross tons as measured under section 14502 of title 46, United States Code, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary

under section 14104 of that title shall be entitled to documentation under the laws of the United States, and except as restricted by this section, shall be entitled to engage in the coastwise trade and, together with their owners or masters, shall be entitled to all the other benefits and privileges and shall be subject to the same requirements, penalties, and forfeitures as may be applicable in the case of vessels built in the United States and otherwise documented or exempt from documentation under the laws of the United States.

A corporation seeking hereunder to document a vessel under the laws of the United States or to operate a vessel exempt from documentation under the laws of the United States shall file with the Secretary of the Treasury of the United States a certificate under oath, in such form and at such times as may be prescribed by him, executed by its duly authorized officer or agent, establishing that such corporation complies with the conditions of this section above set forth. A "parent" or "subsidiary" of such corporation shall likewise file with the Secretary of the Treasury a certificate under oath, in such form and at such time as may be prescribed by him, executed by its duly authorized officer or agent, establishing that such "parent" or "subsidiary" complies with the conditions of this section above set forth, before such corporation may transport any merchandise or passengers for such parent or subsidiary. If any material matter of fact alleged in any such certificate which, within the knowledge of the party so swearing is not true, there shall be a forfeiture of the vessel (or the value thereof) documented or operated hereunder in respect to which the oath shall have been made. If any vessel shall transport merchandise for hire in violation of this section, such merchandise shall be forfeited to the United States. If any vessel shall transport passengers for hire in violation of this section, such vessel shall be subject to a penalty of \$200 for each passenger so transported. Any penalty or forfeiture incurred under this section may be remitted or mitigated by the Secretary of the Treasury under the provisions of section 7 of title 46, United States Code.

Any corporation which has filed a certificate with the Secretary of the Treasury as provided for herein shall cease to be qualified under this section if there is any change in its status whereby it no longer meets the conditions above set forth, and any documents theretofore issued to it, pursuant to the provisions of this section, shall be forthwith surrendered by it to the Secretary of the Treasury.

SEC. 28. CHARGES FOR TRANSPORTATION SUBJECT TO INTERSTATE COMMERCE PROVISIONS (46 App. U.S.C. 884 (2001)). No carrier shall charge, collect, or receive, for transportation subject to the Interstate Commerce Act of persons or property, under any joint rate, fare, or charge, or under any export,

import, or other proportional rate, fare, or charge, which is based in whole or in part on the fact that the persons or property affected thereby is to be transported to, or has been transported from, any port in a possession or dependency of the United States, or in a foreign country, by a carrier by water in foreign commerce, any lower rate, fare, or charge than that charged, collected, or received by it for the transportation of persons, or of a like kind of property, for the same distance, in the same direction, and over the same route, in connection with commerce wholly within the United States, unless the vessel so transporting such persons or property is, or unless it was at the time of such transportation by water, documented under the laws of the United States. Whenever the Secretary of Transportation is of the opinion, however, that adequate shipping facilities to or from any port in a possession or dependency of the United States or a foreign country are not afforded by vessels so documented, he shall certify this fact to the Surface Transportation Board, and the Board may, by order, suspend the operation of the provisions of this section with respect to the rates, fares, and charges for the transportation by rail of persons and property transported from, or to be transported to such ports, for such length of time and under such terms and conditions as he may prescribe in such order, or in any order supplemental thereto. Such suspension of operation of the provisions of this section may be terminated by order of the Board whenever the Secretary of Transportation is of the opinion that adequate shipping facilities by such vessels to such ports are afforded and shall so certify to the Board.

SEC. 29. ASSOCIATION OF MARINE INSURANCE COMPANIES; APPLICATION OF ANTITRUST LAWS (46 App. U.S.C. 885 (2001)).

(a) Whenever used in this section—

(1) The term “association” means any association, exchange, pool, combination, or other arrangement for concerted action; and

(2) The term “marine insurance companies” means any persons, companies, or associations, authorized to write marine insurance or reinsurance under the laws of the United States or of a State, Territory, District, or possession thereof.

“(b) Nothing contained in the “anti-trust laws” as designated in section 1 of the Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,” approved October 15, 1914, shall be construed as declaring illegal an association entered into by marine insurance companies for the following purposes: To transact a marine insurance and reinsurance business in the United States and in foreign countries and to reinsure or otherwise apportion among its membership the risks undertaken by such association or any of the component members.

SEC. 33. JONES ACT - RECOVERY FOR INJURY TO OR DEATH OF SEAMAN (46 App. U.S.C. 688 (2001)).

(a) **Application of Railway Employee Statutes; Jurisdiction.** Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

(b) **Limitation for Certain Aliens; Applicability in Lieu of Other Remedy.**

(1) No action may be maintained under subsection (a) or under any other maritime law of the United States for maintenance and cure or for damages for the injury or death of a person who was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action, if the incident occurred—

(A) while that person was in the employ of an enterprise engaged in the exploration, development, or production of offshore mineral or energy resources—including but not limited to drilling, mapping, surveying, diving, pipelaying, maintaining, repairing, constructing, or transporting supplies, equipment or personnel, but not including transporting those resources by a vessel constructed or adapted primarily to carry oil in bulk in the cargo spaces; and

(B) in the territorial waters or waters overlaying the continental shelf of a nation other than the United States, its territories, or possessions. As used in this paragraph, the term “continental shelf” has the meaning stated in Article I of the 1958 Convention on the Continental Shelf.

~ (2) The provisions of paragraph (1) of this subsection shall not be applicable if the person bringing the action establishes that no remedy was available to that person—

(A) under the laws of the nation asserting jurisdiction over the area in which the incident occurred; or

(B) under the laws of the nation in which, at the time of the incident, the person for whose injury or death a remedy is sought maintained citizenship or residency.

SEC. 36. PARTIAL INVALIDITY (46 App. U.S.C. 887 (2001)). If any provision of this Act is declared unconstitutional or the application of any provision to certain circumstances be held invalid, the remainder of the Act and the application of such provisions to circumstances other than those as to which it is held invalid shall not be affected thereby.

SEC. 37. DEFINITIONS (46 App. U.S.C. 888 (2001)). When used in this Act, unless the context otherwise requires, the terms "person," "vessel," "documented under the laws of the United States," and "citizen of the United States" shall have the meaning assigned to them by sections 1 and 2 of the "Shipping Act, 1916," as amended; the term "board" means the United States Shipping Board; and the term "alien" means any person not a citizen of the United States.

SEC. 39. SHORT TITLE (46 App. U.S.C. 889 (2001)). This Act may be cited as the Merchant Marine Act, 1920.